

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

v.

REX XU YU,
Defendant.

CASE NO. 5:16-CR-00202-002

JUDGE DAN A. POLSTER

DEFENDANT REX XU YU'S
SENTENCING MEMORANDUM

CERTIFICATE OF SERVICE

Defendant Rex Xu Yu, by and through undersigned counsel, submits the following sentencing memorandum for consideration at his sentencing hearing on October 13, 2016, at 11:30 AM. Defendant submits that a sentence at the low end of the applicable guideline range is sufficient but not greater than necessary to serve the purposes of sentencing under 18 U.S.C. § 3553(a).

Respectfully submitted,
/s/ Samuel G. Amendolara

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MEMORANDUM

I. INTRODUCTION

Defendant Rex Xu Yu pleaded guilty to one count of Conspiracy to Commit Wire Fraud and Honest Services Wire Fraud, a violation of 18 U.S.C. § 1349 and 18 U.S.C. § 1346. Under the plea agreement, with adjustments (including acceptance of responsibility) the total base offense level is 17. Yu has no prior criminal history, which therefore establishes a criminal history category of I. According to the sentencing table, an offense level of 17 and a criminal history category of I equates to a sentencing range of 24 to 30 months of incarceration. Yu submits that a sentence at the low end of the range, i.e., 24 months, is sufficient but not greater than necessary to serve the purposes of sentencing under 18 U.S.C. § 3553(a).

II. PROPOSED SENTENCE

Under 18 U.S.C. § 3553(a), a district court must impose a sentence that is “sufficient but not greater than necessary” to comply with the purposes of sentencing. Those purposes are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct; [and]
- (C) to protect the public from further crimes of the defendant[.]

18 U.S.C. § 3553(a)(2). In addition the district court must consider both (1) the history and character of the defendant and (2) the nature and circumstances of the offense. 18 U.S.C. § 3553(a)(1).

A. History and Character of Rex Xu Yu

Rex Xu Yu is 37 years old. Yu’s parents, Jin and Jimin, were humble farmers, who raised Yu and his older brother in an extremely poor and rural community in Jiangsu, a province on the eastern coast of China. Growing up, Yu’s family lacked basic amenities such as electricity and

running water. On top of that they did not always have enough to eat. The education system in Yu's town was very disadvantaged, with most children failing to finish primary school.

Despite these harsh conditions, Yu became one of the first members of his community over more than 100,000 people to attend university. Yu earned a Bachelor of Science degree in applied chemistry in 2001. He earned a Master of Science in applied chemistry in 2004. And he earned a Master of Business Administration in 2015. Yu's native language is Mandarin, but he learned to read and write in English.

Yu started working for BASF in Shanghai in 2004. Next he worked as a manager for Inveo Trading Company in Shanghai in 2008. And most recently starting in 2009 he was employed as a director for Goodyear, which was also in Shanghai.

In 2008, at the age of 30, Yu married Fan Yan. They have two daughters, ages 5 and 1. Yu's wife stays home to care for the family. In addition to their two children, Yu's household includes both of his parents, as well as his wife's parents, as is tradition in China. They all live together in Shanghai, while Yu's older brother lives one province to the north. Yu has been separated from his family since his arrest in February. He is supremely remorseful for the embarrassment he has caused them.

B. The Nature and Circumstances of the Offense

Yu has admitted to wrongdoing and pleaded guilty to one count of Conspiracy to Commit Wire Fraud and Honest Services Wire Fraud, a violation of 18 U.S.C. § 1349 and 18 U.S.C. § 1346. Along with his supervisor and co-defendant, Franco Fan, Yu participated in a rubber purchasing arrangement between Goodyear, their employer, and various shell companies in which they had an interest. Since his arrest Yu has fully accepted responsibility and made restitution in the amount of \$300,000.

C. Statutory Objectives of Sentencing

Under 18 U.S.C. § 3553(a), the Court should impose a sentence that sufficient, but not greater than necessary, to comply with the purposes of sentencing. Those purposes include:

(1) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense

Yu has accepted personal responsibility for his actions by way pleading guilty plea and making restitution. Since his arrest, Yu has shown appropriate deference and respect for the law and the seriousness of his offense. Consequently, a period of imprisonment of 24 months will serve as sufficient punishment and is within the agreed-upon sentencing guidelines.

(2) to afford adequate deterrence to criminal conduct

Yu recognizes that he made terrible decisions when he committed the offense that brought him before this Court. He has lost his job. He has severely reduced his earning capacity. And he has lost any opportunity to stay in the United States. Yu is extremely regretful and remorseful about the shame he has brought on his family. In light of that, 24 months of imprisonment will serve as an adequate deterrence to future criminal conduct.

(3) to protect the public from further crimes of the defendant

Yu sincerely regrets engaging in the behavior that led to this case. Of course the fact that he will be incarcerated (relative to this case) for two years will serve to protect the public from any possible future crimes during that time. Further, the experience of being convicted in federal court and the opportunity to reflect upon the seriousness of his conduct and the resulting impact on himself and his family has all strengthened Yu's resolve to lead a law-abiding life upon the conclusion of his incarceration.

III. CONCLUSION

Rex Xu Yu grew up amongst extreme poverty in rural China. Despite the harsh conditions, Yu earned an education, obtained good employment, and started his own family. Unfortunately, while trying to get ahead, Yu became part of a conspiracy that violated both the law and the ethical guidelines of his job. Yu has pleaded guilty to his crime and fully accepted responsibility, including making restitution. According to the plea agreement, Yu faces an offense level of 17. That, coupled with a criminal history category of I, equates to a guideline range of 24 to 30 months of imprisonment. Yu asserts that a sentence at the low end of that range, i.e., 24 months, would be sufficient but not greater than necessary to serve the purposes of sentencing under 18 U.S.C. § 3553(a).

Respectfully submitted,
/s/ Samuel G. Amendolara

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CERTIFICATE OF SERVICE

I certify that on October 7, 2016, a copy of Defendant's Sentencing Memorandum was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Samuel G. Amendolara

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